II. Remarks

A. Status of the Claims

Claims 1-18 will be pending after entry of this amendment. Claims1, 5, 9, 13, and 17 have been amended without prejudice. Support for the amendments can be found throughout the application as originally filed, specifically, e.g., in paragraph **[0026]** and Figure 1 of the Specification. Applicants submit that no new matter has been added by virtue of this amendment.

Before proceeding, Applicants wish to thank the Examiner for withdrawing the previous rejections under 35 USC §101.

B. Claim Rejections Under 35 U.S.C. § 112, second paragraph

In the Office Action, claims 1, 9, and 17 were rejected under 35 U.S.C. § 112, second paragraph. Specifically, the Examiner alleged that "it is unclear where the order execution server is coupled and in which markets are the trades being initiated." *Office Action page 3.*

In response, all instances of "foreign market" and "domestic market" in the claims have been amended to recite "foreign external market" and "domestic external market," respectively. Applicants respectfully submit that claims 1, 9, and 17 particularly point out and distinctly claim the subject matter which the Applicants regard as their invention.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 112, second paragraph be removed.

C. Claim Rejections Under 35 U.S.C. § 103(a)

1. Note Regarding Potter Reference

In the Office Action, the Examiner mentions a reference called Potter in his discussion of the current rejections under 35 U.S.C. § 103(a) on pages 5 and 7. However, no patent or publication number is provided for Potter, and Potter is not cited in paragraphs 15 or 20 in which the Examiner recites the instant rejections under Burns, Gerhard, Tsagarakis, Waddell and Raykhman. It is therefore unclear whether the current rejections are based on Potter, or whether Potter was inadvertently cited in the Examiner's discussion of the current rejections.

Applicants' undersigned representative spoke with Examiner Vyas via telephone on January 25, 2010 to clarify the extent to which the current rejections are based on the Potter reference. The Examiner confirmed that Potter was erroneously included in his discussion of the instant rejections, and that all such mention of the Potter reference should be ignored. Accordingly, Applicants' below arguments are not directed to the Potter the reference.

2. Burns et al., Gerhard, Tsagarakis et al., and Waddell

In the Office Action, claims 1, 3-5, 7-9, 11-13 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,243,083 to Burns et al. in view of U.S. Patent No. 6,952,683 to Gerhard in further view of U.S Publication No. 2002/0087455 to Tsagarakis et al. and U.S. Patent No. 7,412,415 to Waddell.

This rejection is respectfully traversed. Applicants submit that the combined teachings of Burns, Gerhard, Tsagarakis, and Waddell fail to render obvious the systems and methods for initiating trading of a spread of a security in a foreign external market and a security in a

domestic external market, as presently claimed. The Examiner is reminded that pursuant to MPEP, 8th Ed., 7th Rev. § 2142, to establish a prima facie case of obviousness, and thus sustain the rejection of a claim under 35 U.S.C. § 103(a), there must be a clear articulation of the reasons why Applicants' claimed invention would have been obvious. *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007). The Supreme Court in KSR has further noted that an analysis supporting a rejection under 35 U.S.C. § 103(a) should be made explicit. Therefore, it is clear that an obviousness rejection "cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977 (Fed. Cir. 2006). Moreover, "[t]o support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP, 8th Ed. 7th Rev. § 706.02(j).

(i) Tsagarakis does not disclose initiating a first order in a foreign external market for a first security of a spread in a foreign currency.

Independent claims 1, 5, 9, 13, and 17 each involve initiating a first order in a foreign external market for a first security of a spread in a foreign currency. The Examiner admits that Burns does not disclose this limitation, and relies upon Tsagarakis to allegedly teach this limitation. *Office Action page 4.*

However, Applicants respectfully submit that Tsagarakis does not disclose initiating a first order in a foreign external market for a first security *of a spread*, as presently claimed, at

least because there is no mention in Tsagarakis that the trade described therein is a first security *of a spread.* The order of Tsagarakis stands alone, separate from any other security transaction, and is not part of a spread. On the other hand, the "first order in a foreign external market" of the present claims is accompanied by a "second order in a domestic external market," and these two orders are traded as a pair based on particular spread parameters. Applicants respectfully submit that a skilled artisan would not be led to initiate the first order of a spread of the present claims based on the stand-alone order of Tsagarakis. Therefore, Tsagarakis fails to disclose or obviate a first order in a foreign external market for a first security of a spread at least because the order of Tsagarakis is not a first security *of a spread.*

Although Tsagarakis does not disclose the first and second orders of a spread in foreign external and domestic external markets, as presently claimed, the Examiner nonetheless alleges in the Office Action that based on Tsagarakis paragraphs **[0042]** and **[0044]**, it would have been obvious to one of ordinary skill in the art "to have specifically incorporated a first order of a first security and a second order of a second security in separate markets to facilitate the best available spread and pass on several cost advantages to the customer." *Office Action page 5.* However Applicants respectfully submit that the cited portions of Tsagarakis address cost advantages that may be realized based on differences in foreign exchange rates, which is entirely different from the strategic advantages associated with placing two orders in different markets within certain spread parameters, as presently claimed. The discussion of foreign exchange rate cost advantages in Tsagarakis therefore has no bearing on the pair trading strategy of the instant invention and fails to obviate the present claims.

(ii) Waddell does not suggest initiating pair trading in foreign external markets.

In the Office Action, the Examiner alleged that the external markets of Waddell "could also be broadly interpreted as a foreign market." *Office Action page 5.* Applicants respectfully disagree with this statement. An "external market" is generally any market which is external to a provider of the system. Applicants respectfully submit that the general term "external" provides no guidance as to whether the market is foreign or domestic. Instead, external simply means a market that is outside of the system provider's own inventory, i.e. external to the provider. Waddell even distinguishes between an "external market" and "firm inventory" in its discussion of the system described therein. *See, e.g., Waddell, column 14, line 59, and column 15, lines 3-11.* Further, the external markets of Waddell are exemplified by United States domestic markets (e.g. the New York Stock Exchange and the NASDAQ). *Waddell, column 7, line 20.* Additionaly, all exemplary transactions of Waddell are in United States Dollars. *See, e.g., Waddell column 9, line 56; column 10, line 4; column 11, lines 34-35; column 12, lines 6 and 29.* Therefore, Applicants respectfully submit that a skilled artisan would not be motivated by Waddell to place a first order in a foreign external market because Waddell makes no mention or suggestion of foreign markets or foreign currency. Accordingly, Applicants respectfully submit that Waddell does not suggest, discuss, or obviate placing "a first order in a *foreign* external market for a first security of the spread" as presently claimed.

(iii) Burns does not disclose transmission of execution data.

In the Office Action, the Examiner alleged that Burns discloses the limitations of "transmit execution data to the spread database" and "wherein the spread database is coupled to the processor and the order execution server, and is configured to store information relating to

the spread received from the order execution server and the spread engine." *Office Action page 4*. The Examiner cites Figure 8 and column 14, lines 41-60 in support of his position. However Figure 8 and the cited portion of Burns simply address a Spread Market Display. The "Spread Market Display" is defined in Burns as a feature that "provides a trader with a window display that illustrates where the current spread is trading, while also showing the market depth as related to that spread." *Burns, column 14, lines 41-46*. Applicants respectfully submit that the Spread Market Display of Burns is a window display for the trader that simply *displays* "where the current spread is trading," and in no way discloses either the *transmission* of execution data to the spread database or the *coupling* of the spread database to the processor and the order execution server, as recited by the present claims. Indeed, Burns does not even provide a mechanism for executing trades and storing information related to those trades back to the investor, and instead is merely directed to methods for displaying market data.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §103(a) be removed.

3. Burns et al., Gerhard, Tsagarakis et al. and Raykhman.

In the Office Action, claims 2, 6, 10 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Burns in view of Gerhard and Tsagarakis and further in view of U.S. Patent No. 7,171,386 to Raykhman.

This rejection is respectfully traversed. Applicants submit that the combined teachings of Burns, Gerhard, Tsagarakis, Waddell, and Raykhman fail to render obvious the systems and methods for initiating trading of a spread of two or more securities in two or more markets, as presently claimed.

For the reasons discussed *supra*, Applicants submit that the combined teachings of Burns, Gerhard, Tsagarakis, and Waddell specifically do not disclose the limitations of (1) initiating a first order in a foreign external market for a first security of the spread in a foreign currency; (2) initiating pair trading in foreign external markets; and (3) transmitting execution data. Applicants further submit that Raykhman is relied upon by the Examiner solely as it relates to the limitations of dependent claims 2, 6, 10 and 14, and therefore fails to cure the deficiencies of Burns, Gerhard, Tsagarakis, and Waddell.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §103(a) be removed.

III. Conclusion

In view of the amendments made and arguments presented, it is believed that all claims are in condition for allowance. If the Examiner believes that issues may be resolved by a telephone interview, the Examiner is invited to telephone the undersigned at (973) 422-6532. The undersigned also may be contacted via e-mail at lschroeder@lowenstein.com. All correspondence should be directed to our address listed below.

AUTHORIZATION

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 50-1358.

Respectfully submitted,
Lowenstein Sandler PC

Date: March 2, 2010

s /Lisa K. Schroeder/
By: Lisa K. Schroeder
Attorney for Applicants
Registration No. 59,401

DOCKET ADMINISTRATOR
LOWENSTEIN SANDLER PC
65 Livingston Avenue
Roseland, NJ 07068
General Tel.: 973-597-2500